IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7723 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANIRUDHSINH H RANA

Versus

G S R T C

Appearance:

1. Special Civil Application No. 7723 of 1995

MR MUKESH H RATHOD for Petitioner No. 1-2

MS UTPALA VORA for MR YOGESH S LAKHANI for Respondent No. 1-2

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 06/04/2004

ORAL JUDGEMENT

The petitioner at the relevant time was working

as conductor with the respondents. He was appointed on that post on 11th March, 1971. After putting in about 23 years service, he developed certain physical disabilities which according to him were as a result of constant travelling in the bus on the rough routes. He was, therefore, medically examined by the experts and the physical disability suffered by the petitioner was confirmed. Since, he was unable to discharge his duty any more on account of physical unfitness, his service was terminated with effect from 21st January, 1995.

1.1. The petitioner's son who at the relevant time was aged 22 years made an application to the Divisional Controller, at Rajkot, in accordance with the Standing Order no. 361 of 1973, requesting him to appoint him on the post of clerk. In the said application, it was stated that with the termination of service of the petitioner, no earning member was there in the family and the condition of the family members had become very miserable. It was further stated that he was duly qualified for joining employment of the respondent and he requested that he may be appointed on the post of clerk. In response to the said application, the Divisional Controller, vide communication dated 3rd July, 1995, informed the son of the petitioner that he could not be appointed on the post of clerk because his application was not in accordance with the relevant Rules. It was also stated that despite having sympathy for the son of the petitioner, his application could not be entertained. It appears that thereafter, no steps have been taken by the son of the petitioner and the petitioner has, therefore, filed this petition taking up the cause of his son.

1.3. Mr. M. H. Rathod learned advocate appearing for the petitioner has submitted that considering the fact that the petitioner had suffered physical disability on account of constant travelling on rough routes while discharging his duty as conductor, his heir, namely the son was entitled to have a suitable job in the employment of the respondents in accordance with G.S.O. 361. He has, further, submitted that since impugned communication dated 3rd July, 1995, was against the said G.S.O., it was required to be quashed. He has further submitted that no obvious reason has been put forward by the respondents for denying the job to the son of the petitioner.

1.4. As against that Ms. Utpala Vora learned advocate appearing for Mr. Y.S. Lakhani for the respondents has submitted that there is no reliable material on record to show that the petitioner had suffered physical disability

on account of continuous travelling on the rough routes. According to her, the petitioner was given duty on different routes and he was not right when he asserted that he was made to travel only on rough routes. She also submitted that apart from that even the application for the post of clerk not be entertained by the respondents because the petitioner's son did not possess requisite educational qualification. She has submitted that minimum requirements for being appointed on the post of clerk is that the candidate should have passed XII standard, but in the instant case, the son of the petitioner has passed only X standard. Lastly, she has submitted that the respondent was justified in turning down the application because even the G.S.O. prescribed that appointment could be made on post provided the candidate possessed requisite educational qualification and if there was vacancy on that post. She has lastly submitted that this petition had no merit and it deserved to be dismissed.

2. Having gone though the record of the petition, it appears that the petitioner had suffered physical disability of different kinds. This fact can be gathered from annexure-A which is at page 16 of the petition. It shows that the petitioner was examined by the Civil Surgeon, who opined that the petitioner was having following ailments:-

"(1) Osteoporosis (Multiple)
(2) Alheroshrosis
(3) Diabetes
(4) Lumber - Spondylitis
(5) Vertigo (giddiness

2.1. It is a matter of common knowledge, that a conductor is required to continuously travel in the bus. The Corporation i.e. the respondent's buses ply on different routes and the condition of the road on some routes may be good and it may be bad on some other routes. However, it clearly appears from the diagnosis made by the Civil Surgeon that these physical disabilities were on account of continuous travelling on rough roads. The aliments which are caused, can be as a result of continuous travelling on rough routes. Thus, there is no doubt in my mind that the disability that was suffered by the petitioner was on account of discharging of his duty for 24 years.

2.2. The record of the petition further shows that the General Standing Order No. 361 of 1973 issued by the Administration Department of the respondent, clearly

provides for compassionate appointment in cases where the employees of the respondent, who are the only earning member in their families have either expired or they have become disabled while in service. In view of the fact that the petitioner had suffered disability on account of the nature of work he performed while he was in service. The petitioner's son who at that point of time, had attained the majority was entitled to have benefit of this proviso. Accordingly, he had made an application dated 10th February, 1995. Unfortunately, the application was made for the post of clerk for which he was not properly qualified. In other words, requisite educational qualification for appointment on the said post was X standard passed. His application was, therefore, turned down by the Divisional Controller vide communication dated 3rd July, 1995. Plain reading of the said communication reveals that the Divisional Controller had full sympathy for the petitioner's son, but because of the compelling reasons he had not been able to grant the application for appointment. The said Standing Order prescribed that before making appointment, two conditions should exist, namely that the post for which the application is made is available and secondly the candidate is duly qualified for being appointed on the said post. According to Ms. Vora requisite educational qualification was not possessed by the son of the petitioner and, therefore, the respondent - Corporation was justified in not accepting the request of the petitioner's son. However, the respondents ought to have explored some possibility to appoint him on some other post where the education of the petitioner's son did not come in his way. Unfortunately, neither the petitioner nor his son seems to have made any attempt on this line. It appears that instead of making another application, for some lower post, the petitioner has rushed to this Court.

3. On the facts and circumstances of the case narrated above, it clearly appears that the respondent was well within its bounds to reject the request of the petitioner for appointment on the post of clerk, as he was not duly qualified. This petition, therefore, cannot help the petitioner. It is, therefore, desirable that the petitioner should make representation or make an application a fresh, for the post where the educational qualification possessed by him would prove adequate. If such an application or representation is made by the petitioner's son, the respondent - Corporation is directed to entertain the same and if both the conditions stated in the aforesaid Standing Order are fulfilled, he should be given appointment on the same. Ofcourse before

granting appointment it may be seen that by virtue of this he does not score precedence over other similarly situated candidates who are waiting in the queue ahead of him for their turn. The petitioner is directed to make an application on or before 30th June, 2004, and as and when such application/representation is made, respondents will take decision thereof, within four weeks from the date of the receipt of it. In case respondents decides to reject the application, it will intimate the petitioner by written communication explaining the reasons why his application is not being accepted.

This petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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